

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3 MICHAEL T. VINATIERI, EDWARD G. SMETHERS,
4 and KAREN KNUTSEN, et al.,

Case No. 03-2-0020c

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Petitioners,

v.

**ORDER RESCINDING
INVALIDITY - 2005**

LEWIS COUNTY,

Respondent.

THIS Matter comes before the Board upon the request of Lewis County for the Board to rescind its earlier determination of invalidity as to the industrial land bank provisions of Ch. 17.20 of the Lewis County Code (LCC). Lewis County's Compliance Report and Request to Rescind Invalidity on August 19, 2005.

In this decision, we rescind our earlier determination of invalidity. Final Decision and Order, May 6, 2004; Compliance Order – 2005, January 7, 2005. The Board's decision with respect to compliance will be issued November 23, 2005.

PROCEDURAL HISTORY

We originally found Ch. 17.20 LCC failed to comply with RCW 36.70A.367(4), RCW 36.70A.130(1), and RCW 36.70A.140 by failing to provide a public participation procedure. Final Decision and Order, May 6, 2004. Thereafter, the County adopted Ordinance 1179G and Resolution 04-251. Upon review, the Board found that the County failed to consult with the cities as required by RCW 36.70A.367 in the adoption of Ordinance 1179G and Resolution 04-251. The Board also found that the public participation program applicable to master planned locations for major industrial activity within an industrial land bank pursuant

1 to RCW 36.70A.367 did not comply with the GMA requirements of RCW 36.70A.140,
2 36.70A.035, 36.70A.130, and 36.70A.070, and GMA Goal 11, RCW 36.70A.020(11).
3 Compliance Order – 2005, January 7, 2005.
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5 Because we found there was substantial potential for a manufacturing or industrial business
6 permit application to vest under the non-compliant procedures, the Board found that the
7 continued validity of Ordinance 1179G and Resolution 04-251, as to RCW 36.70A.367,
8 substantially interfered with the County's fulfillment of Goal 11 (public participation and
9 community coordination) of the GMA.
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12 On April 4, 2005, the County requested an extension of time to achieve compliance and that
13 motion was granted on April 22, 2005. 2005 Order Extending Period for Compliance. The
14 extended compliance due date was set for June 7, 2005.
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17 The second motion for extension was brought on June 1, 2005, and requested additional
18 time for the County to complete its compliance efforts in this case. Second Motion of Lewis
19 County to Extend Compliance Report Date. The County requested until July 16, 2005, to
20 achieve compliance. No opposition was filed and the Board extended the time for
21 compliance to July 16, 2005. Second 2005 Order Extending Period for Compliance.
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24 Upon motion of the County, the period for compliance was EXTENDED to August 12, 2005.
25 Third 2005 Order Extending Compliance Period, July 13, 2005. A compliance briefing
26 schedule was set and the compliance hearing scheduled for October 19, 2005. The
27 compliance hearing in this matter was held on October 19, 2005, in the Historic Lewis
28 County Courthouse. Eugene Butler represented the Petitioners. Douglas Jensen, chief civil
29 deputy prosecuting attorney, Robert Johnson, and Mike McCormick represented Lewis
30 County. All three board members attended.
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1 **ISSUE PRESENTED**

2 Does Ch. 17.20 LCC as it applies to industrial land banks no longer substantially interfere
3 with Goal 11 of the Growth Management Act, RCW 36.70A.020(11)?
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5 **BURDEN OF PROOF**

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7 “All comprehensive plans, development regulations and amendments to them adopted
8 pursuant to the Growth Management Act are presumed valid upon adoption. RCW
9 36.70A.320(1). However, a county or city subject to a determination of invalidity “has the
10 burden of demonstrating that the ordinance or resolution it has enacted in response to the
11 determination of invalidity no longer substantially interfere[s] with the fulfillment of the goals
12 of this chapter under the standard in RCW 36.70A.302(1).” RCW 36.70A.302(4).
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15 **DISCUSSION**

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17 The County adopted Ordinance 1179J, on August 8, 2005. Ordinance 1179J recites that it
18 was adopted to “clarify the public participation portions of Ch. 17.20 LCC to respond to the
19 Hearings Board’s compliance and invalidity directives.” It is therefore an ordinance enacted
20 in response to a determination of invalidity.
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22 The County argues that substantial interference with the public participation and community
23 coordination goal of the GMA has been removed by the County’s compliance actions with
24 respect to the two issues found noncompliant by this Board. First, the County consulted
25 with the cities in establishing the process for reviewing and approving applications for
26 industrial land banks pursuant to RCW 36.70A.367. Second, the County established a
27 public participation program for such applications that folds the workshop and hearing
28 provisions of the County’s general public participation program (Ch. 17.12 LCC) into its
29 review of application for major industrial developments.
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1 Petitioners argue that the consultation with the cities' requirements should provide a
2 coordination opportunity with the cities. They argue that the procedures in Ch. 17.20 LCC
3 lack a required consultative step with the cities. Petitioners Objections to Lewis County
4 Compliance Report at 2. They further argue that the ordinance does not provide for early
5 involvement of the public or cities. Ibid at 7. Petitioners argue that cities have the right to
6 have urban growth occur within their urban growth areas and citizens have the right to be
7 protected from "hostile zoning" in the rural areas. Ibid at 7-8.
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10 The minutes of the July 14, 2005, Planned Growth Committee show that the committee
11 considered the changes to Ch. 17.20 LCC and approved them. Exhibit 23. The Planned
12 Growth Committee includes representatives from all the cities in Lewis County.¹ The
13 County consulted with the cities through the Planned Growth Committee and therefore has
14 removed substantial interference with Goal 11 on that score.
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17 On the issue of the public participation program adopted for review and approval of
18 applications for industrial land banks pursuant to RCW 36.70A.367, the County has
19 amended its development regulations in LCC 17.20.050. These now create a procedure
20 where the inventory of developable land must be prepared and presented by the applicant
21 at the time of application:
22

23 Once the application is complete, including the presentation by the plan proponent of
24 an inventory of developable land..
25 LCC 17.20.050(3) (in pertinent part).
26

27 With this change, the inventory of developable land becomes part of the public
28 environmental review process under the State Environmental Policy Act (SEPA) as well as
29 part of the public application itself. Ch. 17.112 LCC. Subsequently, at least one
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32 ¹ The County asserted this at argument but has not yet provided the requested document for the record on this point. Since Petitioners do not contest this point, the Board accepts it for purposes of this order.

1 background workshop is provided including an introduction to matters for Commission
2 consideration under RCW 36.70A.367. LCC 17.20.050(3). After the workshop is held, the
3 Planning Commission publishes notice of a public hearing and draft proposals for public
4 hearing and comment. LCC 17.20.050(4). The Planning Commission hearing is
5 consolidated with the Hearing Examiner review of the master site plan. As needed, more
6 workshops to respond to public comment may be held by the Planning Commission. LCC
7 17.20.050(6). Notice of the public hearing before the Board of County Commissioners is
8 published based on the recommendations of the Planning Commission. LCC
9 17.20.050(7)(a). Public comment may be written or oral before the Board of County
10 Commissioners. LCC 17.20.050(7)(b).

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13 We find that these procedures remove substantial interference with Goal 11 as to public
14 participation in the process for reviewing and approving applications for industrial land
15 banks pursuant to RCW 36.70A.367. These procedures no longer substantially interfere
16 with the involvement of citizens in the planning process, which is the goal for citizen
17 participation.
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20 FINDINGS OF FACT

- 21 1. Lewis County is located west of the crest of the Cascade Mountains and is required
22 to plan pursuant to RCW 36.70A.040.
- 23 2. This case is before the Board upon a determination of invalidity applicable to the
24 County's process for designating an industrial land bank pursuant to RCW
25 36.70A.367. Final Decision and Order, May 6, 2004; Compliance Order – 2005,
26 January 7, 2005.
- 27 3. The Petitioners were parties to this case in the original proceedings and have
28 participated in person or in writing in the legislative adoption proceedings in Lewis
29 County with respect to the issues raised in the Petitions for Review.
- 30 4. The County adopted Ordinance 1179J, on August 8, 2005. Ordinance 1179J recites
31 that it was adopted to "clarify the public participation portions of Ch. 17.20 LCC to
32 respond to the Hearings Board's compliance and invalidity directives."

- 1 5. The minutes of the July 14, 2005, Planned Growth Committee show that the
2 committee considered the changes to Ch. 17.20 LCC and approved them.
- 3 6. The Planned Growth Committee includes representatives from all the cities in Lewis
4 County.
- 5 7. The County's development regulations in LCC 17.20.050 now create a procedure
6 where the inventory of developable land must be prepared and presented by the
7 applicant at the time of application.
- 8 8. With this change, the inventory of developable land becomes part of the public
9 environmental review process under SEPA as well as part of the public application
10 itself.
- 11 9. Subsequently, at least one background workshop is provided including an
12 introduction to matters for Commission consideration under RCW 36.70A.367.
- 13 10. After the workshop is held, the Planning Commission publishes notice of a public
14 hearing and draft proposals for public hearing and comment.
- 15 11. The Planning Commission hearing is consolidated with the Hearing Examiner review
16 of the master site plan. As needed, more workshops to respond to public comment
17 may be held by the Planning Commission.
- 18 12. Notice of the public hearing before the Board of County Commissioners is published
19 based on the recommendations of the Planning Commission.
- 20 13. Public comment may be written or oral in the public hearing held before the Board of
21 County Commissioners.
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CONCLUSIONS OF LAW

- A. This Board has jurisdiction over the parties and subject matter of this case.
- B. Petitioners have standing to challenge the invalidity request of the County.
- C. The amendments to LCC 17.20.050 applicable to public participation in the process for review and approval of applications for industrial land banks pursuant to RCW 36.70A.367 remove substantial interference with public participation in Goal 11 of the GMA.

1 D. The cities of Lewis County were consulted in the adoption of the amendments to LCC
2 17.20.050 applicable to public participation in the process for review and approval of
3 applications for industrial land banks pursuant to RCW 36.70A.367. Therefore, the
4 amendments to LCC 17.20.050 remove substantial interference with coordination
5 between communities and jurisdictions to resolve conflicts in Goal 11 of the GMA in
6 the establishment of a process for review and approval of such applications.
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8 ORDER

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10 Lewis County having removed substantial interference with fulfillment of Goal 11 of the GMA
11 in public participation and consultation with the cities in the process for reviewing and
12 approving applications for industrial land banks pursuant to RCW 36.70A.367, the Board's
13 determination of invalidity on that basis is hereby RESCINDED. The Board's decision on
14 compliance in this case number shall be issued on November 23, 2005.
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16 Pursuant to RCW 36.70A.300 this is a final order of the Board.
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18 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
19 of mailing of this Order to file a petition for reconsideration. The original and three
20 copies of a motion for reconsideration, together with any argument in support
21 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
22 original and three copies of the motion for reconsideration directly to the Board, with
23 a copy to all other parties of record. **Filing means actual receipt of the document at**
24 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
25 of a motion for reconsideration is not a prerequisite for filing a petition for judicial
26 review.

27 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
28 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
29 judicial review may be instituted by filing a petition in superior court according to the
30 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
31 Enforcement. The petition for judicial review of this Order shall be filed with the
32 appropriate court and served on the Board, the Office of the Attorney General, and all
parties within thirty days after service of the final order, as provided in RCW
34.05.542. Service on the Board may be accomplished in person or by mail, but
service on the Board means **actual receipt of the document at the Board office** within

1 thirty days after service of the final order. A petition for judicial review may not be
2 served on the Board by fax or by electronic mail.

3 Service. This Order was served on you the day it was deposited in the United States
4 mail. RCW 34.05.010(19).

5 ENTERED this 18th day of November 2005.
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9 Margery Hite, Board Member

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13 Holly Gadbaw, Board Member

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17 Gayle Rothrock, Board Member